

THE CASE TRUELY STATED.

FOR SETTLING

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In the

ISLAND of JERSEY

The use of a

NOTARY PUBLICK.

MARTIN de Gruchy one of his Majestys native subjects of that Isle, having acted there as a Scrivener for Island affairs & outwards, above eleven years & therein honestly discharged his duty, and being also an Advocate or Proctor of the Spiritual Court there; as may fully appear by authentick Records, & Certificates of Publick approbation, he was after due examination &c. Created and made a Publick Notary & Tabel-lion & sworn accordingly as per Faculty, under the seal of his Grace The Lord ArchBishop's Court of Facultyes, dated the 22. May 1701. Registered in his Majestys Chancery of Facultys the 23. of the same month. And hath qualifi-ed himself according to Acts of Parliament. Anno 1 W & M: cap. 8. & Anno 7 & 8. W. III. cap. 24. Which Faculty is granted by virtue of a Statute. Anno 25. Hen. VIII. cap. 21. whereby *it is enacted that none should thence forth sue to the Bishop or Pope of Rome for any dispensations, compositions, facultyes &c. but that they should be given from that time by the ArchBishop of Canterbury & his Successors to the King & all his subjects of England & other his Majestys Dominions. And that they should be accepted, approved, allowed & admitted good & effectuell in the law in all Courts & Jurisdictions Spirituall & Temporall in England & else where within the King's dominions, & as beneficial under the ArchBishop's seal as if they were under the great seal of England.*

The said De Gruchy intends to execute his said Faculty in Jersey not for passing of any hereditary inland conveyances of houses, grounds & rents, but for such things as are in England the proper objects of Notoriall Practice.

The Civil Magistrates there cannot object any thing against the validity of that character, having themselves publickly allow'd admitted of, & recorded in their Court severall

severall Notoriall Acts done by the said De Gruchy in London. But they may say; that's well for what is done in England; But it is no title for him to practice in Jersey. That's the incumbent question.

For resolving of which difficulty, Three other chief questions must be discussed in due order. I. Whether Acts of Parliament of England may bind Jersey & Guernsey? II. Supposing the matter in the affirmative; when, how, & by what expressions they may bind these Islands. III. Whether the Laws or Priviledges of Jersey can afford any thing derogatory there-unto.

I. *Whether Acts of Parliament may bind Jersey & Guernsey.*

It is resolved affirmatively for the following reasons. 1. In respect to Jersey, which hath a naturall and previous disposition to an English Government, the Islanders loathing the very name of French, & having their affections united to the Crown of England by an inviolable & unspotted Loyalty ever since the Conquest; according to Doctor Heylin's Survey of France pag. 293. & Mr. Fall's account of that Isle, pref. & cap. 7. more authentickly yet recorded in severall Charters of that Isle quoted by the said Mr. Fall; who being a Minister of that Isle, a Member & Deputy of their States, did in an humble adrels to their Majestys King William & Queen Mary, declare, that *though their tongues be French their hearts & swords are truly English; & says that, notwithstanding all fruitless attempts of the French upon them, they are still united to the rest of his Majesty's Dominions.* Cap. 1. pag. 46. & 47. Their originall constitution agrees with it; being a remainder of the Province of Normandy transferred to the Crown of England by W. the Conqueror, & unalienably annex't to that Kingdom by Hen. 1. Anno. 1108. As says Camden *de Insit. Brit.* pag. 855. And the said Mr. Falle cap. 1. pag. 12. And so they were more particularly subjected to the authority & care of the Parliament, who not only now but even in former days was very carefull to allow & provide for the safety & wellfare of these Isles; there being in ancient times scarce any matter of importance concerning them but was heard, determined, or deliberated of in Parliament. As fully appears by Ridley's Placita Parliam. in Appendice pag. 602. Anno 30. E. 1. & pag. 468. Item pag. 467. Item by Sr. Robert Cotton's Abridgements of the Records of the Tower. pag. 29. Item by the said Mr. Falle cap. 1. pag. 16. 17. & 18. cap. 2. pag. 66. cap. 5. pag. 183. & 184.

The Kings of England being successors of their Dukes of Normandy they do ascribe unto them a full Legislative & Judicative power; so their orders in Council are taken by them for sufficient Laws and their determinations are final. As Mr. Guy Miede says in his present State of England: in 1702. Part 2. cap. 7. pag. 43. As for their Ecclesiastical Government it is fully Episcopall, agreeable in Doctrine discipline, service, & ceremonies to that of the Church of England, some unmateriall points onely excepted; This Island being annex't to the Diocess of Winton within the Province of Canterbury, by order of the Queen in Council of the 11. March 1568. & having the particulars of the Dean's Jurisdiction there regulated by Canons under the broad seal of England. Anno 21. Jac. 1. 41



near as could be in conformity with the Ecclesiasticall Government established in his Realm of England, as the very Charter relates it: Mr. Falle's account of that Isle cap. 5. pag. 130. Consonant to which fundamentall Constitutions & Maximes They do use in this place (during the Sessions of Parliament) the Prayer set forth in the Common-prayer Book for imploring God's blessing upon their Consultations. So that once every Sunday in a most humble, pious, & solemn manner they beg of God upon their Knees *to prosper all the consultations of the Parliament that peace & happiness, truth & Justice, Religion, & Piety, may by their endeavours be established among us for all generations.* These six words peace &c. do implye all the concerns of this life, & are the very same as pray'd for in England; which is the proper & immediate Province of the King & Parliament; So this weekly Act of acknowledgement of the Parliament's power over us is too publick to be deny'd, too religious to be recalled, & too clear to be equivocated.

As to the Military Government of the Isle. The Lieutenant Governour Officers & Souldiers of the Castles &c. are totally appointed disciplined, & govern'd as in England, & pay'd out of the aids & subsidies granted by Acts of Parliament; who were always very forward in providing for our safety. And should wee disown our Protectors & Benefactors, it were a Jewish-like ingratitude well deserving that they should leave us to our selves, & to have our vineyard unhedg'd & left open to the fury of the wild boars of the neighbouring Nation, which God forbid. And indeed if any be so daring as to reject the authority of this great Senate it is very like they intend to set up their own. As for the Militia of the Isle *it is modelled & regulated as the Governour pleases* as says Mr. Falle cap. 3. pag. 99. who being always an English Lord or Gentleman subjected to acts of Parliament disposés it agreeably to what is in England as near as the circumstances of the place will permit.

The Civill Government is indeed the onely jarring string because different in some particular Laws or usages, yet not absolutely incompatible with English methods, since in all sea-affairs & matters of trade, nay in severall other cases where their own constitutions prove short, they are determined by the Civill law, the laws of Oleron & other sea-laws as in England. And so may more easily be tuned into a compleat English Government, having not any set laws of their own as says the said Mr. Falle cap. 4. pag. 108. And indeed in matters of Judicature they are so ready to imitate England in cases of a common nature to that Kingdom & to them, that some criminalls there were allow'd the benefit of the King & Queen's Generall Pardon Anno. 2. W. & M. cap. 10. though the Islands were not named nor included therein.

The second head of arguments to assert the Parliament's power here is from the nature & constitution of that Senate. For shall not their Acts bind us; shall it be for want of wisdom? *It was antiently called witenage mote, Conventus sapientum:* Cooks Instit. Part 4. cap. 1. pag. 2. And deserves that name now better then ever, being one of the most August Assemblies in the world. Guy Miegé Present State: Pars 3. cap. 1. pag. 1. What then shall it be for want of power? But Fortescue says of this Court, *si Antiquitatem spectes est vetustissima si dignitatem est honoratissima, si jurisdictionem est capacissima.* Compendium of the English laws: pag. 63. & 68. & 69. What; shall it be for want of a right title to our Islands

obedience? But what better title then their above mentioned protection & maintenance of our Island, Garrisons &c? And besides it hath been set forth that the King hath an absolute Power over us. Acts of Parliament are made by him, with consent of the Lords Spirituall & Temporall & Commons as their stile runs) The King's Councill did formerly sit in the House of Lords, as per Stat. Annis 2. 6. 13. Edw. I. & other statutes more fully mention'd by William Prynne in his Parliamentary writts: pag. 383. &c. having their very precedency therein regulated by a Stat. Anno 31. Henr. VIII. cap. 10. The Lords of the Privy Councill are directed, sworn & governed by Acts of Parliament, & most of them do even now sit in the House of Lords. Cooks Instit. Pars 4. cap. 2. The King calls his Parliament by advice of the Privy Councill. *The King is Caput, principium, & finis Parliamenti & sit there in his Royall Politick capacity.* Compend of English laws pag. 52. So that what he doth there are most solemn & Publick Acts, & may well be called of the King & Privy Councill as well as Acts of Parliament, because made by their joint assent, and so most binding as to our Island. Except any be so senseless as to affirm that what the King doth in that most August Senate & Great-Councill of the whole Nation endow'd with a boundless power is not as authentick as what he doth in his Privy Councill, which hath no legislative nor Judicative power upon the life or estates of the subjects of England as per Stat. Anno 17. Car. I. cap. 10, or to suppose him capable of recalling or contradicting in the lesser what he hath enacted solemnly in the greater Assembly. A ridiculous supposition not deserving the least refutation. The above quoted William Prynne in his Parliamentary writts pag. 412. gives the reasons why Jersey Guernesey &c. do not send any Burgeses to the Parliament though subjected & united to England. And indeed the English laws are next to God's own law delivered by Moses the best & most just in the whole world. Cook's Instit. Pars 1. lib. 6. fol. 97. which for their goodness were transferred to Ireland by Hen. II. Cook's Instit. Pars 4. cap. 76. pag. 349. & to the Principality of Wales Anno 27. Hen. VIII. cap. 26. and were successfully observed in Callais (though a French Town) for 211. years; & which are admired by all other Nations: And shall, not these laws so beneficiall to severall large Countrys be sufficient to govern a spot of ground of 12. parishes? But what of all this, must wee be bound by all Acts of Parliament & pay taxes &c.? No our charters & immemorall prescription do shelter us from that. But wee must in all other cases dutifully comply with Acts of Parliament when wee are designed to be included in them. And how that may be done is our next generall question.

II. *When & how & by what expressions Acts of Parliament may bind The Island of Jersey.*

The extent of them is express't in a threefold Stile. 1. Indeterminately as when they name no place, or say onely within this Realm, this Kingdom, or the like As for raising of any subsidies &c. and in that case they do not bind us, because that most Honorable Court being composed of members called onely from the parts of England, when they speak thus determinately they are supposed to mean onely of their own native Country. The 2. stile is when Jersey is particu-
lary

larly named, as in the Statutes. Anno 12. Car. II. cap. 11. Anno 12. Car. II. cap. 18 and 32. & severall others. It hath been resolved by his Majesty's Attorney Generall upon a remonstrance of the Inhabitants of our Isle that in this case wee are bound by them, & his opinion approved by the Right Honorable the Lords of the Committee for the affairs of Jersey, & finally confirmed by their Excellencies the Lords Justices in Council by order of the 8. Septemb. 1698. transmitted to the Baillif & Jurates of Jersey to be govern'd accordingly. So this point is now unquestionable. The 3. Stile is when they say England & all other the King's dominions or Territorys or the like. Which is the proper case of this Stat. Anno 25. Hen. VIII. cap. 21. 1. As to the Etymology of the word Dominion viz Seignury or Lordship. The above express't annexing of us to England in spirituall & temporall respects, their protecting & defending us from our enemies time out of mind is a most sufficient title for it. And the King's Power being absolute over us, & *he being caput principium & finis Parliamenti*; the Parliament's Power is his; & so must certainly make us Englands Dominion. It is to be noted the Stat. Anno 25. Hen. VIII. cap. 21. doth not say England's Dominions, but the Kings Dominions which (though much the same) is stronger against us. 2. It is agreeable to the constant usage of the Island. For in the very same Session the Crown was settled upon King Edw. VI. Queen Mary & Queen Elis. by those very words of England & other the King's Dominions; yet no Islander will dare to say they had no lawfull sovereignty upon those Islands, because not expressly named in the statute, or signify'd to them by order of Council. And those are the very same words of extent of the other statutes of limitation of the Crown. Anno 1. W. & Mary cap. 2. Anno 12. & 13. William III. which yet are uncontrollably binding to Jersey &c. *Ireland is self though formerly different in laws from England; & a separate Kingdom was ever thought obliged by Acts of Parliament of England when specially named or by generall words included; as within any of the King's Dominions* See Cook's Instit. Pars 4. cap. 76. pag. 351. And what greater priviledge can wee pretend to then Ireland could then. By two statutes viz. Anno 37. Hen. VIII. cap. 4. & Anno 1. Edw. VI. cap. 14. Severall revenues of the Church were given to the King by none other words of Extent but England & other Dominions. And they were sold since in Jersey by Royall Commissioners with expresse mention of those statutes, & are still in possession of severall Gentlemen of the Island: Which if these words do not bind us they have no title to, so must in conscience restore them to the Church for fear of having a *MENE TE KEL* writ upon their Estates. The irregular marriages made before the Civill Magistrates during the Civill wars of England were confirmed onely by an Act of Parliament. Anno 12. Car. II. cap. 33. by these words in all the *King's Dominions*. Which if not binding; such as were made here shall deserve a shamefull name; and their illegitimated children must restore to more lawfull proprietors the Estates of their reputed ancestors. By the like consequence this Island must for ever renounce the priviledges granted by a Stat. Anno 10. & 11. William. III. cap. 5. for the trade of Newfoundland; And to the glorious & happy advantage reserved to them by the Stat. Anno 12. & 13. Will. III. *of being members of the Privy-Council or of either House of Parliament or holding hereafter any place, office, or Estate from the Crown* Because those priviledges are reserved onely to the natives of England.

land, Scotland, Ireland, & other Dominions there to belonging. King James the II. by order of Councill appointed Mass to be sung & other Romish service to be done in this Isle, & his arbitrary declaration of Liberty of Conscience was here proclaim'd by order of the Court. And those things never recalled but by an Act of Parliament Anno 1. Will. Mary. cap. 2. & Anno 11. & 12. Will. III. cap. 4. by the words of England & *all other Dominions*; which if wee disclaime, those arbitrary constitutions are still in force with us, & any one may sing Mass &c. The ascribing an unlimitare power to our Kings & renouncing the beneficiall Acts of Parliament would make a Priviledge to us of that which England should repute the greatest misery viz an arbitrary government; & would lead our poor little Island into such monstrous consequences that it were better to suffer 1000. Publick Notarys in the Island then to incur the least of them. But all these arguments do seem superfluous, if remembered that the Deputy of their Island Mr. Falle cap. 1. in his humble address to the King & Queen doth in the name of all their states so solemnly Proclaim them to be *the King's Dominions*. But I hear the muttering of some Zealous patriot of the Island saying. Must our ancient laws, usages, & Priviledges be cut off by one onely Act of Parliament penn'd in so generall termes? Honest Countreyman the lesser interest of a spot of ground must yield to the greater interest of two powerfull Kingdoms. Priviledges are *tantum Privata Leges*, which take no place against a generall law. But however let us examine what these laws, usages &c. may say for themselves.

III. *Whether the laws & Priviledges of Jersey can afford any thing derogatory to this case.*

Dr. Falle cap. 4. pag. 107. divides our laws in 4. heads. 1. The Custom of Normandy, which far from it says. *That all will & Testament ought to be pass'd before the Curate, or Vicar, Notary or Tabellion &c.* Art. 412. And Terrien a famous Commentator upon the said Custom mentions frequently Notarys & Tabellions. And at this time are sworn Notarys dispersed for Publick convenience in Normandy & all other Parts of Europe. 2. Municipall & Locall usages. Here indeed must be confessed there was hitherto no such Faculty given since the Reformation partly for want of trade, & partly for want of any body's putting in for it. But it is a privative or negative argument which proves nothing, for if there hath been none, it's no consequence for futurity. So it is in severall Countrey Towns in England, in some of which have dwelt Publick Notarys; in some not. In such case all Publick Acts are attested by the Corporation or Civil Magistrate, & others by private witnesses or Scriveners according to the nature of the Instrument. But if a sworn Notary settles in any of those places he is ipso facto invested with whatever belongs to his Notoriall Practice. The said De Gruchy hath in his actuall possession an originall letter written & signed by John Herault Esq. then Baillit of Jersey whereby he informed King James the I. of what he had observed being with Mr. Pary his Embassador to France that might be beneficiall for his Majesty's Government; where amongst many other learned advices he says; England was the onely Kingdom wanting Notarys & Tabellions,

lions, & for lack of such persons, his subjects suffer'd great inconveniencies; & that there ought to be some in all Towns & Citys, nay in the very Boroughs & Villages, & doth very eloquently sett forth the usefullness and necessity of such Facultys & what should be their practice & duty; filling up almost one page in tol. with it. The present Baillif the Honorable Edward Cartet a worthy Successor of such brave Predecessors being made acquainted with the matter by the sayd De Gruchy's letters from London (for want of occasion to do it personally) he hath not signify'd any thing in opposition thereto; he being indeed too wise & too just to contradict such strong arguments. For indeed should he or any member of the Court gainsay the said Notoriall Faculty thus granted by authority of Parliament; they should in effect & consequence overthrow their own Jurisdiction, nay ruine the Island it self becaule most of their Charters are granted in these words; *auctoritate or advisamento Parliamenti nostri*. And the very liberty of having wooll from England (one of their most important priviledges) is granted by 2. Acts of Parliament viz Anno 12. Car. II. cap. 32. & Anno 1. Will. & Mary cap. 32. The 3^d. sort of laws are Constitutions & Ordinances made by our Kings, orders of the Privy-Councill, & of Commissioners Royall. Neither of which do offer any thing derogatory to the premises. And far from it the orders of Commissioners sent here in 1607. do contain a very favorable Article in behalf of the Scriveners of this Island, which was the onely Notarys wee had then. And in 1689. Febr. 8. by virtue of an order of his late Majesty in Councill two Comissions under the great Seal of the High Court of Admiralty of England, together with the said order were solemnly read & recorded verbatim in the Royall Court of Jersey. By which Comissions is expressly directed that all depositions &c. to be done by virtue of them shall be drawn by any Publick Notary. So that Faculty becomes part of our laws. The 4. & last sort of laws are Precedents ~~per Judgement~~ of the Court; & Politicall & provisionall Ordinances. but as Mr. Falle himself says; *they are no laws in a strict or proper sense, wanting the Royall authority without which nothing can be law*. And as it is more authentickly declared by an order of Councill of 1619. recited by the said Mr. Falle cap. 6. page. 196. In these words. *Such acts as are made in their assembly of States are but provisionall Ordinances; and have no power or property of laws untill they be confirmed by us*.

So in all these 4. sorts of laws there is nothing to counter ballance the strength of an Act of Parliament nor to suppress this Faculty of Publick Notary grounded thereon. But suppose there were any such thing; it should come from the very same authority or else be utterly void & should be regarded onely as a dath of the nauseated dispensing power of the late Reigns so sharply check't in the Excellent Act of Parliament Anno 1. Will. & Mary. cap. 2. In these words. *That the pretended power of suspending or dispensing with laws or the Execution of laws by Regall authority without consent of Parliament is illegall*. And should deserve to be refuted in the very words of the said Statute. *That no declarations, judgements, doing or Proceedings to the prejudice of the people in any of the premises ought in any wise to be drawn here after into consequence or example*. Wee have a famous example of this in the case of the two free schools of the Island; where the Court having assumed

assumed to themselves to vacate the Royall Patent of Foundation granted. Anno 12. Hen. VII. by adjudging the patronage otherwise then therein limited. The matter was restored to it's due course & all the incompetent Acts done contrary there-unto were declar'd void by order of his Majesty in Council of the 16. Novemb. 1693.

This Notoriall case being impartially Stated to his Majestys Attorney Generall & Advocate Generall of England they have resolved under their hands *That the said Notary is well appointed & all Acts done by him as a Publick Notary within that Island will be as good as those done by any Publick Notary in England.*

The said De Gruchy hopes his calling hath been sufficiently asserted and deserves justly the encouragement & good countenance of the Royall Court of the said Island.



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